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## TRANSMITTAL FORM

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Total Number of Pages in This Submission

|                        |                |
|------------------------|----------------|
| Application Number     | 09/618,955     |
| Filing Date            | July 19, 2000  |
| First Named Inventor   | Tu             |
| Art Unit               | 2154           |
| Examiner Name          | El Hady, N.    |
| Attorney Docket Number | FUSN1-01103US0 |

Total Number of Pages in This Submission

### ENCLOSURES (Check all that apply)

|  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input checked="" type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Response to Missing Parts/ Incomplete Application<br><input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br><input type="checkbox"/> Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance communication to Group<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please Identify below):<br>Postcard |
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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name

Brian I. Marcus, Esq., Vierra Magen Marcus Harmon & DeNiro LLP

Signature

Date

September 30, 2004

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# FEE TRANSMITTAL

## for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ 165)
**Complete if Known**

|                      |                |
|----------------------|----------------|
| Application Number   | 09/618,955     |
| Filing Date          | July 19, 2000  |
| First Named Inventor | Tu             |
| Examiner Name        | El Hady, N.    |
| Art Unit             | 2154           |
| Attorney Docket No.  | FUSN1-01103US0 |

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| Deposit Account Number | 501826                                     |
| Deposit Account Name   | Vierra Magen Marcus<br>Harmon & DeNiro LLP |

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**FEE CALCULATION****1. BASIC FILING FEE**

| Large Entity | Small Entity | Fee Code (\$) | Fee Code (\$) | Fee Description          | Fee Paid |
|--------------|--------------|---------------|---------------|--------------------------|----------|
| 1001         | 2001         | 770           | 385           | Utility filing fee       |          |
| 1002         | 2002         | 340           | 170           | Design filing fee        |          |
| 1003         | 2003         | 530           | 265           | Plant filing fee         |          |
| 1004         | 2004         | 770           | 385           | Reissue filing fee       |          |
| 1005         | 2005         | 160           | 80            | Provisional filing fee   |          |
|              |              |               |               | <b>SUBTOTAL (1) (\$)</b> | 0        |

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

| Total Claims | Independent Claims | Multiple Dependent | Extra Claims | Fee from below | Fee Paid |
|--------------|--------------------|--------------------|--------------|----------------|----------|
|              |                    |                    | -20**        | =              | X = 0    |
|              |                    |                    | -3**         | =              | X = 0    |

| Large Entity               | Small Entity | Fee Description  |
|----------------------------|--------------|--|
| 1202                       | 2202         | 9 Claims in excess of 20                                     |
| 1201                       | 2201         | 43 Independent claims in excess of 3                         |
| 1203                       | 2203         | 145 Multiple dependent claim, if not paid                    |
| 1204                       | 2204         | 43 ** Reissue independent claims over original patent        |
| 1205                       | 2205         | 9 ** Reissue claims in excess of 20 and over original patent |
| <b>SUBTOTAL (2) (\$)</b> 0 |              |  |

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

| Large Entity              | Small Entity | Fee Code (\$) | Fee Code (\$) | Fee Description  | Fee Paid |
|---------------------------|--------------|---------------|---------------|--|----------|
| 1051                      | 2051         | 130           | 65            | Surcharge - late filing fee or oath  |          |
| 1052                      | 2052         | 50            | 25            | Surcharge - late provisional filing fee or cover sheet                     |          |
| 1053                      | 1053         | 130           | 130           | Non-English specification  |          |
| 1812                      | 1812         | 2,520         | 2,520         | For filing a request for ex parte reexamination                            |          |
| 1804                      | 1804         | 920*          | 920*          | Requesting publication of SIR prior to Examiner action                     |          |
| 1805                      | 1805         | 1,840*        | 1,840*        | Requesting publication of SIR after Examiner action                        |          |
| 1251                      | 2251         | 110           | 55            | Extension for reply within first month                                     |          |
| 1252                      | 2252         | 420           | 210           | Extension for reply within second month                                    |          |
| 1253                      | 2253         | 950           | 475           | Extension for reply within third month                                     |          |
| 1254                      | 2254         | 1,480         | 740           | Extension for reply within fourth month                                    |          |
| 1255                      | 2255         | 2,010         | 1,005         | Extension for reply within fifth month                                     |          |
| 1401                      | 2401         | 330           | 165           | Notice of Appeal   |          |
| 1402                      | 2402         | 330           | 165           | Filing a brief in support of an appeal                                     | 165      |
| 1403                      | 2403         | 290           | 145           | Request for oral hearing   |          |
| 1451                      | 1451         | 1,510         | 1,510         | Petition to institute a public use proceeding                              |          |
| 1452                      | 2452         | 110           | 55            | Petition to revive - unavoidable   |          |
| 1453                      | 2453         | 1,330         | 665           | Petition to revive - unintentional   |          |
| 1501                      | 2501         | 1,330         | 665           | Utility issue fee (or reissue)   |          |
| 1502                      | 2502         | 480           | 240           | Design issue fee   |          |
| 1503                      | 2503         | 640           | 320           | Plant issue fee  |          |
| 1460                      | 1460         | 130           | 130           | Petitions to the Commissioner  |          |
| 1807                      | 1807         | 50            | 50            | Processing fee under 37 CFR 1.17(q)  |          |
| 1806                      | 1806         | 180           | 180           | Submission of Information Disclosure Stmt                                  |          |
| 8021                      | 8021         | 40            | 40            | Recording each patent assignment per property (times number of properties) |          |
| 1809                      | 2809         | 770           | 385           | Filing a submission after final rejection (37 CFR 1.129(a))                |          |
| 1810                      | 2810         | 770           | 385           | For each additional invention to be examined (37 CFR 1.129(b))             |          |
| 1801                      | 2801         | 770           | 385           | Request for Continued Examination (RCE)                                    |          |
| 1802                      | 1802         | 900           | 900           | Request for expedited examination of a design application                  |          |
| Other fee (specify) _____ |              |               |               |  |          |

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL (3) (\$)** 165

(Complete if applicable)

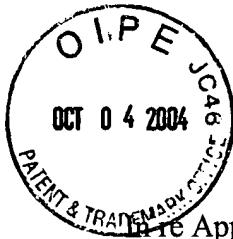
**SUBMITTED BY**

|                   |                 |                                   |        |                         |
|-------------------|-----------------|-----------------------------------|--------|-------------------------|
| Name (Print/Type) | Brian I. Marcus | Registration No. (Attorney/Agent) | 34,511 | Telephone(415) 369-9660 |
| Signature         |                 |                                   |        | Date                    |

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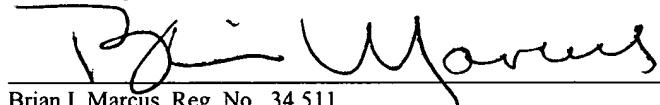
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

AE  
EBC

Patent Application ) PATENT APPLICATION  
Inventor: Edgar Allen Tu )  
Application No.: 09/618,955 )  
Filed: July 19, 2000 )  
Title: AGENT SYSTEM FOR A SECURE )  
REMOTE ACCESS SYSTEM )  
Customer No. 28554 )

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8

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\_\_\_\_\_  
Brian I. Marcus, Reg. No. 34,511  
Signature Date: September 30, 2004

APPEAL BRIEF

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This brief is submitted in accordance with 37 C.F.R. §1.192, in triplicate, following the Notice of Appeal filed by Appellant(s) filed on September 16, 2004. The fee set forth in 1.17(c) is submitted herewith.

10/05/2004 HVUDNG1 00000018 09618955

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**I. REAL PARTY IN INTEREST (37 C.F.R. §1.192(c)(1))**

The real party in interest is fusionOne, Inc.

**II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §1.192(c)(2))**

Appellant knows of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS (37 C.F.R. §1.192(c)(3))**

Claims 1-9 are pending in this application. Of these, claims 1-9 stand finally rejected. Appellant herein appeals from the final rejection of each of claims 1-9.

**IV. STATUS OF AMENDMENTS (37 C.F.R. §1.192(c)(4))**

No amendments are submitted with this Brief. All amendments to date have been entered.

**V. SUMMARY OF THE INVENTION (37 C.F.R. §1.192(c)(5))**

The present invention relates to an agent system for communicating secure data between a base device and a secure remote access system. Conventional systems such as remote access servers (RAS) and remote control servers (RCS) allow access and communication between two computers that are remote from each other either through a point-to-point telephone connection or via the Internet. (Patent Application, pp 2-3). Such conventional systems have several drawbacks. First, with respect to file synchronization, where a remote computer downloads files from a host computer, those files are no longer available on the host computer. Thus, for example, if an email is downloaded to a remote computer, it may no longer be available for viewing from the host computer (Patent Application, p. 4). Second, files created with proprietary applications are generally stored in a proprietary file format. Unless the remote computer also has the same proprietary applications as the host computer, the remote computer will often be unable to access or use those files (Patent Application, p.4). Third, such conventional remote access systems are generally complicated and must be administered by a network systems administrator. (Patent Application, pp. 4-5).

These shortcomings of the prior art are overcome by the present invention which in embodiments relates to an agent system and method residing on a base device, such as a remote computer or hand-held device, which provides secure communication between the base device and one or more remote access devices, for example via the Internet. The agent generally comprises software code or algorithm which is executed within the base device for carrying out the secure communication. (Patent Application, p. 5-6). The agent system initiates data communication with the remote access devices by sending requests and receiving replies from the remote access devices. The replies may include requests to retrieve, store, update, and/or delete data associated with the base device, which the agent system carries out. The agent system further provides reply data to such requests to the remote access devices. (Patent Application, p.6).

The agent may include a user-interface module, a registration module, a server communication module, and a job handler module. (Patent Application, p.12-13). The user-interface module comprises a conventional user-interface such as a graphical user-interface (GUI) for receiving input commands and/or displaying output to the user of the base device, such as for example registration information (e.g., user name, password, etc.), which registration information is communicated to the registration module for processing. (Patent Application, p.13). The server communication module carries out communications to and from the agent. The server communication module is further coupled to the job handler module. When a task is received in the agent via the server communication module, the server communication module communicates the task to the job handler module for processing. (Patent Application, p.14).

## **VI. ISSUES FOR REVIEW (37 C.F.R. §1.192(c)(6))**

**A.** Whether Claims 1, 6 and 8 of the application are properly rejected under 35 U.S.C. § 102 over U.S. Application Publication No. 2002/0047471 A1 to Johnson.

**B.** Whether Claims 2-5, 7 and 9 of the application are properly rejected under 35 U.S.C. § 103 over U.S. Application Publication No. 2002/0047471 A1 to Johnson in view of U.S. Application Publication No. 2002/0016912 A1 also to Johnson.

## **VII. GROUPING OF CLAIMS (37 C.F.R. §1.192(c)(7))**

Applicant requests for the purposes of review that Claims 1-7 be grouped together and Claims 8-9 be grouped together.

## **VIII. ARGUMENT (37 C.F.R. §1.192(c)(8))**

### **A. The Cited References**

The Examiner has based the rejection on two references to Johnson, which in turn claim priority to two earlier references to Johnson also relied on by the Examiner. For ease of convention, the following will be used to refer to the various Johnson references:

- Johnson I - Publication No. US 2001/0047471, forming the basis of the rejection of claims 1, 6 and 8 under §102(e);
- Johnson II - Publication No. US 2002/0016912, forming part of the basis of the rejection of Claims 2-5, 7 and 9 under §103(a);
- Johnson III - U.S. Patent No. 6,499,108, of which Johnson I and Johnson II are continuation-in-part applications;
- Johnson IV - U.S. Patent No. 5,970,149, of which Johnson I and Johnson II are continuation-in-part applications.

**B. The Examiner Erred In Rejecting Claims 1, 6 and 8 over Johnson I Under 35 U.S.C. §102(e)**

1. Johnson I Has A Priority Date Under 102(e) After the Filing Date of the Present Invention

Johnson I was filed on August 1, 2001. The present application was filed on July 19, 2000. Therefore, Johnson I by itself cannot be considered prior art to the present invention. The Examiner has however stated that the “same concept” of Johnson I used to reject the claims was supported in the earlier Johnson III and IV references, and that therefore the rejection over Johnson I was proper. The Examiner stated:

[Johnson IV] disclose the same concept [as Johnson I] of a base device with a secure agent system operating within to secure communicating data associated with the base device..., the base device configured to be coupled with a remote access system.

[Johnson III] disclose the same concept [as Johnson I] of a base device with a secure agent system operating within to secure communicating data associated with the base device..., the base device configured to be coupled with a remote access system.

Applicant respectfully submits that Johnson III and Johnson IV do not provide adequate support for the disclosure of Johnson I to allow the priority date of Johnson I to be carried back before applicant’s filing date. Therefore, Johnson I cannot be used as prior art to the present invention under Section 102(e).

Applicant respectfully submits that the Examiner has applied and incorrect standard with regard to when a CIP may benefit from the filing date of the parent as a prior art reference under §§102(e) and 120. In a chain of continuation-in-part applications, the date of a parent application can be relied upon under §120 as a 102(e) reference with respect to claimed elements *if and only if* all of the claimed elements are disclosed in the parent application. *In re Wertheim*, 646 F.2d 527 (CCPA 1981); *In re Smith*, 458 F.2d 1389 (CCPA 1972). Therefore, to support a rejection under Section 102(e), the Examiner must show that each of the claimed features is disclosed within a reference in existence at the time the present application was filed.

There are several features of the invention recited in Claims 1, 6 and 8 which are nowhere disclosed in Johnson III or IV, nor has the Examiner indicated in the Office Actions that these features are shown in Johnson III or IV. Without such a showing by the Examiner, Johnson III and IV may not be relied upon as support for the rejection over Johnson I. For example, at least the following express claim elements are not found in either Johnson III or IV:

- a job handler module operatively coupled to said server communication module, said job handler configured to retrieve, store, update and delete data associated with the base device (Claim 1);
- retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system (Claims 6 and 8).

As set forth below, applicant respectfully submits that these features are not shown in Johnson I either. However, whether or not Johnson I shows these features is immaterial, as Johnson I was filed after the filing date of the present application and therefore by itself is not prior art. The disclosure of Johnson I is only relevant to the extent it is supported by and entitled to the filing dates of Johnson III and/or IV. The scope of prior art may only include references filed prior to the filing date of the instant application. While Johnson III and IV fall within this scope, Johnson III and IV do not disclose the above-described limitations of the claimed invention.

The Examiner appears to appreciate this. If Johnson III or IV showed each feature of the claimed invention, then the Examiner would have used Johnson III or IV as the basis of the rejection. However, the Examiner appears to understand that Johnson III and IV do not disclose all of the claim elements and therefore, could not form the basis of the rejection. Instead, the Examiner attempts to circumvent this requirement by stating that Johnson I shows the claim limitations, and then stating Johnson I is entitled to the Johnson III or IV filing dates with respect to the claim limitations. This is impermissible unless the Johnson III or IV also disclose those claim limitations. As discussed above, they do not.

Based on the above, it is respectfully submitted that Johnson I is not prior art to the present invention, and while Johnson III and IV may be within the scope of the prior art, they do not disclose the claimed invention.

2. Johnson I Does Not Disclose the Invention Recited in Claims 1, 6 and 8

In the Office action, the Examiner has rejected Claims 1, 6 and 8 under §102(e) over Johnson I, stating in part:

Johnson does not specifically disclose retrieving, storing, updating and deleting data. However, these processes are inherent in “transference of data associated therewith” of ([0047], lines 13-15).

Applicant respectfully submits that the Examiner has applied an incorrect standard to inherency and/or meaning to the language said to inherently show the claimed limitations. Where a reference is alleged to inherently disclose a claim element, the missing element must necessarily be present in the cited reference and that it be so recognized by those of skill in the art. It is not enough that the missing element is possibly or probably present. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

The alleged support set forth by the Examiner for the claim limitations is as follows:

As used herein, the term "adaptor" refers synonymously to those hardware configurations such as, but not limited to, "adaptor cards" which allow for connectability between two or more central processing units *and the transference of data associated therewith*. (Johnson I, ¶ 0047, emphasis added).

The phrase “transference of data associated therewith” implies no more than the adaptor allows for transfer of data between two or more central processing units. There is no disclosure whatsoever at that section that:

- the transference of data must include the storing of data;
- the transference of data must include the updating of data;
- the transference of data must include the deleting of data.

As these features are not necessarily part of the transference of data, these features cannot be considered inherent as that principal applies to §102.

As indicated above, Johnson I cannot be considered prior art to the present invention. Moreover, Johnson I fails to disclose the features recited in Claims 1, 6 and 8. It is therefore respectfully requested that the rejection on these grounds be withdrawn.

3. The Advisory Action

In the advisory action mailed August 6, 2004, the Examiner indicated that applicant's Response After Final filed June 24, 2004 would not be considered because the Response does not place the application in a condition for allowance. Under paragraph 5, the Examiner stated that "Johnson IV falls within the scope of the invention." The Examiner then set forth where Johnson IV allegedly shows the features of the invention.

It is unclear from this whether the Examiner's statements in the Advisory Action are intended to remove the rejection over Johnson I and make a new rejection over Johnson IV, or whether the statements with regard to Johnson IV were intended to show how it provides support for the cited Johnson I reference. In any event, it is respectfully submitted that Johnson IV fails to disclose the invention for the reasons set forth above.

C. The Examiner Erred In Rejecting Claims 2-5, 7 and 9 over Johnson I in View of Johnson II Under 35 U.S.C. §103

Claims 2-5, 7 and 9 were rejected under §103 over Johnson I in view of Johnson II. As stated above, it is respectfully submitted that Johnson I is not prior art to the present invention. Moreover, Claims 2-5, 7 and 9 each depend directly or indirectly on Claims 1, 6 and 8, and are therefore patentable over the cited references as set forth above with respect to Claims 1, 6 and 8. None of the cited references, taken alone or in combination with each other teach or suggest the invention recited in Claims 1, 6 and 8, nor Claims 2-5, 7 and 9 dependent thereon.

Furthermore, it is respectfully submitted that Johnson II is not prior art to the present invention as Johnson II was filed October 4, 2001 and the present application was filed July 19,

2000. The Examiner has stated that Johnson II is prior art based on same grounds as Johnson I; namely on the grounds that Johnson III and/or Johnson IV disclose the "same concept" as Johnson II.

Applicants respectfully disagree on similar grounds to those discussed above with respect to Johnson I as prior art; namely, that the limitations specifically cited from Johnson II as reading on the claims are not supported in Johnson III or IV, and that the Examiner appears to understand this because if Johnson III or IV did in fact support the rejection, then the rejection would be based on Johnson III and/or IV, and not the later filed Johnson II.

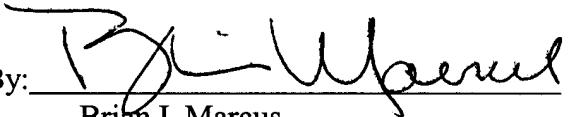
## IX. CONCLUSION

Based on the above, it is respectfully submitted that Claims 1-9 are patentable over the cited references, and it is respectfully requested that the rejection of Claims 1, 6 and 8 on Section 102(e) grounds, and that the rejection of Claims 2-5, 7 and 9 on Section 103 grounds be withdrawn.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this Appeal Brief, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: September 30, 2004

By:   
Brian I. Marcus  
Reg. No. 34,511

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**APPENDIX**  
**CLAIMS ON APPEAL**  
**37 C.F.R. §1.192(c)(9)**

1. (original) In a base device configured to be coupled with a remote access system, a secure agent system operating within said base device comprising:
  - a) a server communication module configured to initiate data communication with the remote access system; and
  - b) a job handler module operatively coupled to said server communication module, said job handler configured to retrieve, store, update and delete data associated with the base device.
2. (original) The secure agent system of claim 1, wherein said server communication module is further configured to periodically transmit task connection requests to the remote access system and receive task connection replies from the remote access system.
3. (original) The secure agent system of claim 2, wherein said server communication module is further configured to communicate said task connection replies to said job handler module for processing.
4. (original) The secure agent system of claim 2, wherein said server communication module is configured to transmit task connection reply data in response to said task connection replies.
5. (previously presented) The secure agent system of claim 1 further comprising a wake-up module operatively coupled to said server communication module, said wake-up module configured to monitor the base device for a wake-up signal and to connect the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.

6. (original) A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform a method for securely communicating data associated with a base device to a remote access system, said method comprising:

- a) initiating data communication by the base device with the remote access system;
- b) retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system.

7. (previously presented) The program storage device of claim 6, said method further comprising:

- a) monitoring the base device for a wake-up signal prior to initiating data communication with the remote access system; and
- b) connecting the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.

8. (original) A method for securely communicating data associated with a base device to a remote access system, said method comprising:

- a) initiating data communication by the base device with the remote access system;
- b) retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system.

9. (previously presented) The method of claim 8, further comprising:

- a) monitoring the base device for a wake-up signal prior to initiating data communication with the remote access system; and
- b) connecting the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.